

PT 96-22  
Tax Type: PROPERTY TAX  
Issue: Charitable Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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KOINONIA HOUSE	)		
OF DUPAGE COUNTY	)		
Applicant	)		
	)	Docket #	94-22-29
v.	)		
	)	Parcel Index	#05-16-421-010
THE DEPARTMENT OF REVENUE	)		
OF THE STATE OF ILLINOIS	)		

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RECOMMENDATION FOR DISPOSITION

Appearances: Mr. James C. Geoly appeared on behalf of Koinonia House of DuPage County (hereinafter referred to as the "Applicant").

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on December 19, 1995, to determine whether or not DuPage County parcel number 05-16-421-010 and the residence located thereon should be exempt from real estate tax for the 1994 assessment year.

Mr. Manuel Mill, executive director of the applicant, testified on behalf of the applicant.

The issues in this matter include first, whether the applicant owned this parcel and the residence located thereon during the 1994 assessment year. The second issue is whether the applicant is a charitable organization. The last issue is whether this parcel and the residence located thereon were used for charitable purposes, or were this parcel and the residence thereon leased or otherwise used for profit during the 1994 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned this parcel during the entire 1994 assessment year. It

is also determined that the applicant is not primarily a charitable organization. Finally, it is determined that this parcel and the residence thereon were leased or otherwise used for profit during the 1994 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcel here in issue and the residence thereon, did not qualify for exemption for the 1994 assessment year, was established by the admission in evidence of Department's Exhibits 1 through 5B.

2. On March 23, 1994, the DuPage County Board of Review forwarded an Application for Property Tax Exemption To Board of Review, concerning this parcel for the 1994 assessment year. (Dept. Ex. No. 1)

3. On January 20, 1995, the Department notified the applicant that it was denying the exemption of the parcel here in issue and residence thereon, for the 1994 assessment year. (Dept. Ex. No. 2)

4. The applicant then requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing held in this matter on December 19, 1995, was held pursuant to that request.

6. The applicant acquired this parcel pursuant to a warranty deed, dated October 31, 1991. (Dept. Ex. No. 1C)

7. This parcel was acquired by the applicant to help men who had been in jail and who had embraced Christianity while there, and were about ready to get out of jail. (Tr. pp. 11 & 12)

8. During 1994, the residence on this parcel was occupied by Mr. Manuel Mill, his wife, Barbara, his son, Howard, and 4 persons who had been released from jail and who had applied to live there. (Tr. pp. 13 & 18)

9. During 1994 there also was a garage located on this parcel which was used to shelter the executive director's car and to store garden and lawn tools, the snow blower and shovels and donated furniture and household items. (Dept. Ex. No. 1M)

10. During the first two months that a new resident is out of jail, he lives in the house on this parcel and all of his daily needs, including food, clothing, a place to sleep, \$15.00 per week in spending money and access to a pay phone are made available to him. (Tr. pp. 13 & 18)

11. During this time period since the applicant is providing all of a new resident's needs, there is time available for him to read and study. (Tr. pp. 13-15)

12. If the new resident has questions or concerns about what he has read, Mr. Mill, whose office is in the basement of the house on this parcel, is available to assist him. (Tr. pp. 13-15)

13. Mr. Mill is an ordained Baptist pastor. (Appl. Ex. No. 6) When he and his family first lived in this house they paid rent to the applicant. From and after August 30, 1993, Mr. Mill no longer paid rent to the applicant to live in this house. (Appl. Ex. No. 4)

14. Mr. Mill, in his position as executive director of the applicant was paid a salary of \$32,500.00, plus his housing was furnished to him during the 1994 assessment year. As a part of his employment by the applicant he was required to supervise this facility. (Tr. pp 32 & 47)

15. The residents are allowed to stay in the house as long as they need to, provided they are obeying the rules, up to a maximum of 14 months. (Tr. pp. 37 & 38)

16. After the first two months, the residents of the house are expected to get a job and to pay rent to the applicant of \$150.00 per month. (Tr. p. 31)

17. The lease agreements with the residents provide that the lessee shall pay \$1.00 per day for each day the rent payment is late. Those lease agreements

also provide that the resident may be evicted for failure to pay rent. (Dept. Ex. Nos. 1R & 1S)

18. As of the date of the hearing the applicant did not have a policy concerning waiving or reducing those rental payments in cases of need. (Tr. pp. 31 & 32)

19. During the 1994 assessment year, the applicant's primary source of income was contributions totaling \$129,603.00. The rental income received by the applicant during 1994 totaled \$2,417.00. The interest income received by the applicant during that year totaled \$1,451.00. The other income received by the applicant that year was \$3,347.00. (Appl. Ex. No. 3 p. 3)

20. Since the applicant was incorporated pursuant to the General Not For Profit Corporation Act of Illinois, the applicant does not have any capital, capital stock, or shareholders and does not profit from the enterprise. (Dept. Ex. No. 1E)

#### Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax

exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

Based on the foregoing, I conclude that the applicant owned this parcel during the entire 1994 assessment year.

The applicant used this parcel and the house thereon as a residence for men recently released from jail. Mr. Mill, executive director of the applicant, is required to live in this residence to be available to supervise the residents.

In considering whether or not the applicant qualifies as a charitable organization, in the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. Since each of the applicant's residents comes directly from jail, the benefits derived are for an indefinite number of persons who have embraced Christianity and wish to stay out of jail. Since the applicant is organized pursuant to the General Not For Profit Corporation Act of Illinois, it has no capital, capital stock, or shareholders, and does not profit from the enterprise. The applicant's funds are primarily derived, I conclude, from public and private charity, and are held

in trust for the objects and purposes expressed in the charter. Since the applicant does not waive or reduce the payment of rent or the late payment fee in cases of need, I conclude that charity is not dispensed to all who need and apply for it, that obstacles are placed in the way of those seeking the benefits, and that the property is not primarily used for charitable purposes. Consequently, I conclude that the applicant did not meet guidelines (4), (5) and (6) of the foregoing six guidelines.

It should be noted that the Illinois Courts have consistently held that the use of property to produce income is not an exempt use, even though the net income is used for exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). See also The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should also be noted that if property, however owned, is let for return, if it is used for profit, and so far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit, or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934). Consequently, based on the fact that the applicant entered into a residential lease with each of its residents and did not have a policy concerning waiver or reduction of fees, I conclude that the applicant leased or otherwise used for profit this parcel and the house thereon, during the 1994 assessment year.

I therefore conclude that the applicant owned this parcel and the residence located thereon during the entire 1994 assessment year. I also conclude that the applicant does not qualify as a charitable organization during the 1994 assessment year. Finally I conclude that this parcel was leased or otherwise used for profit during the 1994 assessment year.

Respectfully submitted,

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George H. Nafziger  
Administrative Law Judge  
July ,1996